

Flores Barajas v. Gonzales, No. 04-70866+

SEP 21 2006

BEA, Circuit Judge, concurring in part and dissenting in part:

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

I concur in the disposition except that I would dismiss the petition for review of the motion to reconsider for lack of jurisdiction. We must review only the IJ's order here because "the BIA [did] not perform an independent review of the IJ's decision and instead defer[red] to the IJ's exercise of his . . . discretion." *Campos-Granillo v. INS*, 12 F.3d 849, 852 (9th Cir. 1994). "Under [8 U.S.C. § 1252(a)(2)(B)(i)], we lack jurisdiction to review discretionary decisions in the cancellation of removal context." *Ramirez-Perez v. Ashcroft*, 336 F.3d 1001, 1005 (9th Cir. 2003). Here, although the IJ erred by finding Flores Barajas fit within a *per se* category of aliens not to have good moral character, the IJ also recognized he had discretion to arrive at the same result by exercising his discretion. *See Kalaw v. INS*, 133 F.3d 1147, 1151 (9th Cir. 1997) ("Apart from the *per se* categories, . . . whether an alien has good moral character is an inquiry appropriate for the Attorney General's discretion."). Therefore, I would dismiss Flores Barajas's petition to review her motion to reconsider because we lack jurisdiction to review the IJ's exercise of discretion.